

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Temporary Immediate
Suspension of the License of Karla Dye to
Provide Family Child Care

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND RECOMMENDATION**

The hearing in this matter was conducted by Administrative Law Judge, Steve M. Mihalchick, on October 3, 2002 at the Office of Administrative Hearings, Minneapolis, Minnesota. The record was closed upon adjournment of the hearing that day.

Karla Dye, 2006 – 55th Avenue North, Brooklyn Center, Minnesota 55430-3011 appeared on her own behalf without counsel. Vicki Vial-Taylor, Assistant Hennepin County Attorney, 525 Portland Avenue South, 12th Floor, Minneapolis, Minnesota 55415 appeared on behalf of the Minnesota Department of Human Services and Hennepin County Children, Family, and Adult Services Department.

NOTICE

This report is a recommendation, **not** a final decision. The Commissioner of Human Services will make the final decision after review of the record and may adopt, reject, or modify the Findings of Fact, Conclusions and Recommendation. Under Minn. Stat. § 245A.07, subd. 2a(b), the Commissioner's final order must be issued within ten working days from receipt of this report. Therefore, the parties are urged to file exceptions to this report as soon as possible. The parties should contact the Department of Human Services Appeals and Regulations Division, 651-296-5764 to determine the procedures for filing exceptions and presenting argument.

STATEMENT OF ISSUES

1. Whether reasonable cause exists to believe that the Licensee's actions or failure to comply with applicable law or rule poses an imminent risk of harm to the health, safety, or rights of the children served by her daycare home. The Administrative Law Judge finds that it does not.

2. Whether the temporary immediate suspension of Licensee's daycare license should remain in effect. The Administrative Law Judge concludes that it should not.

Based upon the record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Licensee has been licensed to provide family daycare for about four years in her home in Brooklyn Center, Minnesota. She lives in the home with her 20-year old son and 18-year old daughter. Until mid-July 2002, her husband, Stephen Dye had also lived with them, but he moved out of the home sometime between July 12 and July 22, 2002, while she was on vacation.

2. Licensee and Mr. Dye have been married for ten years and had been in a close relationship for ten years before that. Her son was born shortly after their relationship began, but Mr. Dye treated him as his own child. Their relationship began to break down and they recently had several arguments. Mr. Dye had assaulted Licensee physically once. That was in May, 2002, when she had declined to have sex with him and had gone to sleep. She later awoke to him pulling her hair and hitting her in the face and, as she turned away, in the back. He stopped after she began screaming and crying.^[1]

3. On Friday, August 9, 2002, Mr. Dye, called to say that he wanted to come over to pick up some more of his property. When Mr. Dye arrived, Licensee was at home with nine daycare children and a new male friend. The male friend was just leaving the home to go to the store as Mr. Dye arrived. Mr. Dye had met the male friend previously and had told Licensee that he did not approve of her having someone at the house while he was still paying for it. He spoke to the male friend and asked him to stay away from the house until the couple was divorced.

4. Mr. Dye became angry with Licensee and she asked that he go to the bedroom with her to avoid arguing in front of the daycare children. He did. They argued about their failing relationship. She then heard the small children in the hallway crying, told Mr. Dye that she needed to go take care of the children, and tried to leave. But he grabbed her by the hair and then by the neck and began twisting her neck back and forth. She got past him and he picked up a chair and threatened her with it. She then went out into the living room and told the children to go outside. After they did, he pushed her on to the couch and began hitting her about the nose, eyes, stomach and legs. He pulled out some of her hair. Licensee was kicking at Mr. Dye to get him away from her.

5. While Mr. Dye was assaulting Licensee, the oldest child, an 11-year-old, came in and asked if she should call the police. Licensee told her she should and to go back outside. That is where the other children were and the 11-year-old was the only one supervising the other children at the time. The 11-year-old did call 911 and reported that Licensee was being assaulted.

6. Mr. Dye stopped assaulting Licensee after he saw the child come in, but then saw two bags of clothing she had laundered for the male friend. He grabbed them and went to throw them in the garbage outside the house. Licensee tried to stop him and, as they got outside, he grabbed her by the neck and pushed her up against the side of the house in view of the children. Mr. Dye then lit the clothes in the garbage can on fire. Meanwhile, the 11-year-old asked Licensee if she should call the police again.

7. Two Brooklyn Center police officers arrived at the home and found Mr. Dye in the backyard attempting to put out the fire in the garbage can. They obtained statements from Licensee and Mr. Dye, then arrested Mr. Dye and transported him to jail. One officer contacted Project P.E.A.C.E., an advocacy service for battered women, and arranged for them to contact Licensee later.

8. After all the daycare children had been picked up and the Licensee had explained to the parents what had happened, she went to the hospital for treatment. That was approximately 8:00 p.m. and she was treated for a broken nose and bruising and swelling, particularly around her eyes and legs. She got home about 2:15 a.m. from the hospital.

9. Licensee had called the police department the prior evening to report that she was going to the hospital. One of the officers returned to her residence the next morning, Saturday, August 10, 2002. Licensee told the officer about the hospital visit and provided authorization for the police to obtain her medical records. She also informed the officer that she had spoken with a person from Project P.E.A.C.E. and would be meeting with them Monday morning.^[2]

10. On Monday, August 12, 2002, Licensee went to Project P.E.A.C.E., where she completed an Affidavit and Petition for an Order for Protection. The Affidavit and Petition was filed later that day and an Ex-Parte Order for Protection was issued that set a hearing for August 21, 2002.^[3] Licensee was also interviewed at Project P.E.A.C.E. by a Brooklyn Center police detective. She cooperated fully with him and informed the detective that she wished to follow through with felony charges and would assist in any way with the prosecution of Mr. Dye. The detective signed a felony complaint charging Mr. Dye with third degree assault and filed the criminal complaint in court shortly before noon that day.^[4]

11. Also on August 12, 2002, Licensee called her licensing worker to report the domestic abuse incident. Her report was treated as a complaint and referred to Child Protection Services. They declined it for investigation and it was investigated as a childcare licensing complaint.^[5]

12. On August 15, 2002, two social workers made an unannounced visit to Licensee's home to investigate Licensee's "complaint." They were greeted by Licensee's 18-year-old daughter who was helping with the children while Licensee was in the shower. While they waited for her to finish her shower, they observed the surroundings. There were eight children there including an infant, three toddlers, two five-year-olds about to start kindergarten, a six-year-old, and the 11-year-old.

13. The toddlers were in highchairs eating lunch. One of them had a soup spoon to eat his noodles with. The investigator reported that this child was having difficulty feeding himself with an "oversized spoon." However, the child previously had been trying to eat with a regular teaspoon, but had been putting it too deeply in his mouth and gagging. Therefore, after discussing the matter with the parents, the Licensee had switched him to soup spoons, which are too large to put entirely in his mouth, but which enable him to feed himself without gagging.

14. The investigators also noted that the battery cover on the infant swing was off and the batteries were exposed, an electric paper shredder was on the floor and unplugged from a near by outlet from which the safety cover had been removed, a stapler was on a desk (actually a two drawer file cabinet), and there were batteries on the kitchen counter. All the foregoing were accessible to children.

15. The investigators considered the family room in which the children played to be small and cluttered for the eight children present, the kitchen floor to be dirty, and the living room to be littered with clothing throughout and cluttered. In the dining room, the table was set with dishes and glassware and one of the toddlers was getting into the glasses and there was an ashtray on the table with cigarette butts in it.

16. The investigators noted that the bathroom had curling irons on the counter with an unprotected outlet nearby and toxics under the sink. Licensee had just used those items after her shower and had not put them away as she normally would do so that she could go out and meet with the investigators.

17. The investigators found the bedrooms to be cluttered with clothing and some dirty dishes and noted that one bedroom contained a portable crib that had items stored in it.

18. The investigators noted that a gate prevented children from entering the basement and that there were two "large dogs" in the basement that barked loudly when they approached the area. The dogs are two Labradors that belong to Mr. Dye and have now been removed from the home. The investigators found the stairway to the basement and the part of the basement they observed to be full of clutter as well. Licensee explained that the home was unusually cluttered at the time because her sewer had collapsed under the home and workmen had their equipment in the basement to investigate and repair the problem. Meanwhile, many items from the basement, including the carpeting, had to be hauled upstairs and her daughter had to move out of her basement bedroom to an upstairs room.

19. There is a swimming pool in the backyard, which had stagnant water in it and had not been used recently. There were dog droppings all over the concrete area around the pool. The dog droppings apparently had been a concern to one of the police officers who responded on August 9, 2002, because one of them had called Licensee's licensing worker to report health concerns about the dog droppings. The investigators did note that the fence to the pool area was locked so that the only point of access was through the patio door. That was also locked and inaccessible to the children.

20. In the side yard, by the driveway and where the children played, the investigators noted a rusted bicycle and two lawnmowers out and accessible to the children. The mowers were being put out in the trash and are no longer there. The investigators also noted a chain around a tree in the front yard and some dog droppings near the tree.

21. The investigators concluded that the children had been exposed to a violent situation by seeing Mr. Dye's assault on Licensee and that inadequate supervision had occurred because the 11-year-old had to supervise the children while Licensee was being assaulted. They were also concerned about the clutter and the

lack of play space for the children. They determined that inadequate supervision occurred that day and referred the matter for negative licensing action.^[6]

22. Two of Licensee's parents testified on behalf of the licensee. One has had her son in the daycare for two years and will return him there as soon as Licensee is able to operate again. She testified very believably that she had never seen any problems with dog droppings and that the only clutter she had ever observed was the children's play things. She had looked specifically for safety items such as outlets being covered and had always observed them to be covered. She had been concerned about the pool when she first placed her son there and has been satisfied with the fact that the children are never allowed there and that it is inaccessible to them because of the locked gate and locked patio door. She finds Licensee to be an excellent daycare provider for her son.

23. The other parent who testified was Licensee's sister who had her daughter in Licensee's care and will return her there as soon as possible. She was also of the opinion that Licensee's home was normally nice and clean and not cluttered, except for the situation with the broken sewer pipe in the basement. She had never observed dogs being kept in the front and side yards where the children might play or dog droppings there.

24. On August 16, 2002, the County wrote the Department recommending that Licensee's license be temporarily immediately suspended based upon the domestic violence incident of August 9, 2002 and upon the licensing violations noted by the investigators on August 15, 2002.^[7]

25. On August 19, 2002, the Department issued an Order of Temporary Immediate Suspension to Licensee based upon the County's recommendation. The reason given for the action were:

On August 12, 2002, Hennepin County Social Services received a report regarding your child care home. The incident is being investigated by Brooklyn Center Police Department. Because this incident remains under investigation, it is confidential data under the Minnesota Government Data Practices Act, and cannot be released in this letter.

Due to the serious nature of the incident under investigation, Hennepin County Social Services cannot insure the safety of the persons served in your program. The Commissioner of the Department of Human Services finds that the health, safety, and rights of children in your care are in imminent danger. Therefore, the Commissioner is immediately suspending your license to provide Family Child Care.

The Order also provided licensee with notice of her right to appeal within five days.^[8]

26. On August 21, 2002, Licensee appeared in court at the hearing on her Petition for an Order for Protection. Mr. Dye was there and, while denying the allegations, agreed to the issuance of an Order for Protection. It was issued that day.^[9]

27. Licensee has continued to cooperate with the prosecution of Mr. Dye. On September 25, 2002, Mr. Dye entered a guilty plea and was found guilty by the court of Assault in the Third Degree under Minn. Stat. § 609.223, subd. 1, a felony. Licensee

testified here that she understood that Mr. Dye was sentenced to 120 days at that time, but the Case History Summary indicates that the matter was referred to the Probation Department for a presentence investigation. Perhaps the prosecutor told her that the plea agreement included a recommended sentence of 120 days. Sentencing has been set for November 7, 2002.^[10]

28. Licensee feels that Mr. Dye is not a threat to her now because he has moved on in his life and is seeing someone else. She has not had any personal contact with him since August 9, 2002, but the two children see him almost daily at his mother's house, where he is now living. She intends to divorce him, but at the moment does not have the resources to do so.

29. In addition to the two daycare parents who testified at the hearing, Licensee's other parents all sent letters of support.^[11] They all refer to the high quality of the daycare she provided and to their inability to find suitable replacement daycare. Some refer to the unfairness of punishing her and them for the actions of Mr. Dye. They do not believe that their children will be in imminent danger if they return to Licensee's care.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Commissioner of Human Services and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 245A.07, subd. 2a, and 14.50.

2. The Department has complied with all substantive and procedural requirements of law and rule and the matter is properly before the Administrative Law Judge and Commissioner. Licensee's appeal, the Notice of Hearing, and the hearing have all been provided within the timelines set forth in Minn. Stat. § 245A.07, subds. 2 and 2a.

3. When a temporary immediate suspension is appealed, the scope of the appeal hearing is limited solely to the issue of whether the temporary immediate suspension "should remain in effect" pending a final order issued on a subsequent licensing sanction. Further, the burden of proof is limited to the Commissioner's demonstration that reasonable cause "exists" to believe that the license holder's actions or failure to comply with applicable law or rule "poses" an imminent risk of harm to the health, safety, or rights served by the program."^[12] Thus, the Administrative Law Judge is required to address the current situation and not whether the temporary immediate suspension was properly issued at the time and not whether reasonable cause existed at the time the temporary immediate suspension was issued.

4. According to the Order of Temporary Immediate Suspension issued to Licensee on August 19, 2002, the reason for the action was based entirely upon the assault of August 9, 2002. While the first sentence of the Order refers to the recommendation by Hennepin County Social Services, which relied upon the additional

licensing violations found on August 15, 2002, the Order makes no mention of those violations. Since Minn. Stat. § 245A.07, Subd. 2, requires the license holder to be given a notice stating the reasons for the immediate suspension, only the domestic abuse incident can be considered in determining whether the temporary immediate suspension should remain in effect.

5. When the Order was issued on August 19, 2002, there was reasonable cause to believe that Licensee could be subject to another assault by Mr. Dye, which would interfere with her ability to provide “supervision” of the children as required by Minn. Rule 9502.0365, subp. 5, and as defined in Minn. Rule 9502.0315, Subp. 29a.^[13] While Licensee was the victim of the assault by her husband, and it may seem unfair to consider this a violation by Licensee, it is more important to take immediate action to ensure that the children will be as safe as possible.

6. At the hearing, Licensee demonstrated that she has taken all steps available to her legally to prevent a recurrence and that, in fact, it is very unlikely that Mr. Dye will return to the home and assault her again. No reasonable cause to believe that the children would be in imminent risk of harm now exists.

7. In the original investigative report submitted to the Department in support of its recommendation, the investigators also reported that the assault by Mr. Dye constituted a “violation” of Minn. Stat. § 245A.07, subd. 2. That cannot be. Apparently that was an attempt to refer to the incident as posing an imminent risk of harm. A revised complaint form submitted at the hearing,^[14] changed that “violation” to refer to Minn. Rule 9502.0395, subp. 2 A., describing it as “emotional abuse (daycare children witnessed domestic violence between provider and husband).”^[15] The cited rule does not apply to the situation here. The rule states, in relevant part:

9502.0395 Behavior Guidance.

Subpart 1. **Methods.** Caregivers shall give each child guidance which helps the child acquire a positive self-concept, self-control, and teaches acceptable behavior.

• • •

Subp. 2. **Standards.** The following shall apply to all caregivers when guiding behavior in children.

A. No child shall be subject to corporal punishment or emotional abuse....
“Emotional abuse” means the intentional infliction of verbal or psychological abuse on a child by a caregiver.

What happened here does not fall within the definition of emotional abuse in this rule. Licensee did not inflict the emotional damage the children suffered, and Mr. Dye was not a caregiver.

8. Even if it were appropriate to consider the “additional licensing violations” cited by the County, they do not currently pose an imminent risk of harm to the children. The dogs belong to Mr. Dye and have been permanently removed from the home along with the droppings they create. The two exposed electrical outlets were temporary occurrences because the paper shredder and hair curler had just been used. All plugs

normally have inserts in them. The cleaning supplies under the bathroom cabinet were there only because the Licensee hurried out of the shower to meet with the investigators. The general clutter may have been a temporary situation, but is of concern. So are the small items and two lawnmowers accessible to the children. The investigators did not identify the rule provisions that were violated by the conditions that day, but they were probably violations of Minn. Rule 9502.0425, physical environment, and Minn. Rule 9502.0435, sanitation and health. These matters are properly dealt with as a normal correction order and should be followed up with a reinspection. But they do not create an imminent risk of harm and do not, in combination with the assault on Licensee, constitute an imminent risk of harm.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED that the Commissioner of Human Services Order that the temporary immediate suspension of the license of Karla Dye to provide Family Child Care be rescinded immediately.

Dated this 11th day of October, 2002

s/Steve M. Mihalchick
STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Tape recorded, one tape

^[1] Exhibit 4 at 6

^[2] Exhibit 1

^[3] Exhibits 4 and 5

^[4] Exhibits 1 and 3

^[5] Exhibit 7

^[6] Exhibit 8, Attachment C

^[7] Exhibit 8

^[8] Exhibit 9

^[9] Exhibit 6

^[10] Exhibit 10

^[11] Exhibit 11

^[12] Minn. Stat. § 245A.07, subd. 2a

^[13] The investigators cited only Minn. Rule 9502.0315, Subp. 29a in their first report. Exhibit 8, Attachment C. The actual requirement to provide supervision appears in Minn. Rule 9502.0365, Subp. 5.

^[14] Exhibit 7

^[15] Exhibit 7. The fact that the form had been modified was not made clear at the hearing.